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2001 Florida Code

TITLE XXIX Public Health

Chapter 393 Developmental Disabilities

393.063 Definitions.

393.063 Definitions.--For the purposes of this chapter:

(1) "Active treatment" means the provision of services by an interdisciplinary team necessary to maximize a client's individual independence or prevent regression or loss of functional status.

(2) "Agency" means the Agency for Health Care Administration.

(3) "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

(4) "Cerebral palsy" means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

(5) "Client" means any person determined eligible by the department for developmental services.

(6) "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.

(7) "Comprehensive assessment" means the process which is used to determine eligibility for developmental services and develop the family or individual support plan. The term includes review and evaluation of information provided by the applicant, the individual receiving supports or services through developmental services, or the family, and others providing supports or services to the individual or family, as well as the use of formal assessment instruments.

(8) "Comprehensive transitional education program" means a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities, as defined in subsection (12), and who have severe or moderate maladaptive behaviors. However, nothing in this subsection shall require comprehensive transitional education programs to provide services only to persons with developmental disabilities, as defined in subsection (12). All such services shall be temporary in nature and delivered in a structured residential setting with the primary goal of incorporating the normalization principle to establish permanent residence for persons with maladaptive behaviors in facilities not associated with the comprehensive transitional education program. The staff shall include psychologists and teachers, and such staff personnel shall be available to provide services in each component center or unit of the program. The psychologists shall be individuals who are licensed in this state and certified as behavior analysts in this state, or individuals who meet the professional requirements established by the department for district behavior analysts and are certified as behavior analysts in this state.

(a) Comprehensive transitional education programs shall include a minimum of two component centers or units, as defined in this paragraph, one of which shall be either an intensive treatment and educational center or a transitional training and educational center, which provide services to persons with maladaptive behaviors in the following sequential order:

1. Intensive treatment and educational center. This component is a self-contained residential unit providing intensive psychological and educational programming for persons with severe maladaptive behaviors, whose behaviors preclude placement in a less restrictive environment due to the threat of danger or injury to themselves or others.
2. Transitional training and educational center. This component is a residential unit for persons with moderate maladaptive behaviors, providing concentrated psychological

and educational programming emphasizing a transition toward a less restrictive environment.

3. Community transition residence. This component is a residential center providing educational programs and such support services, training, and care as are needed to assist persons with maladaptive behaviors to avoid regression to more restrictive environments while preparing them for more independent living. Continuous-shift staff shall be required for this component.

4. Alternative living center. This component is a residential unit providing an educational and family living environment for persons with maladaptive behaviors, in a moderately unrestricted setting. Residential staff shall be required for this component.

5. Independent living education center. This component is a facility providing a family living environment for persons with maladaptive behaviors, in a largely unrestricted setting which includes education and monitoring appropriate to support the development of independent living skills by the students.

(b) Centers or units that are components of a comprehensive transitional education program are subject to the license issued to the comprehensive transitional education program and may be located on either single or multiple sites.

(c) Comprehensive transitional education programs shall develop individual education plans for each person with maladaptive behaviors who receives services therein. Such individual education plans shall be developed in accordance with the criteria included in Pub. L. No. 94-142, 20 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.

(d) In no instance shall the total number of persons with maladaptive behaviors being provided services in a comprehensive transitional education program exceed 120.

(e) This subsection shall authorize licensure for comprehensive transitional education programs which by July 1, 1989:

1. Are in actual operation; or
2. Own a fee simple interest in real property for which a county or city government has approved zoning allowing for the placement of the facilities described in this subsection, and have registered an intent with the department to operate a comprehensive transitional education program.

(9) "Day service" means the care, protection, and supervision of a client for a period of less than 24 hours a day on a regular basis which supplements for the client, in accordance with his or her individual needs, daily care, enrichment opportunities, and health supervision.

(10) "Day facility" means any nonresidential facility which provides day services.

(11) "Department" means the Department of Children and Family Services.

(12) "Developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

(13) "Developmental services institution" means a state-owned and state-operated facility, formerly known as a "Sunland Center," providing for the care, habilitation, and rehabilitation of clients.

(14) "Developmental training facility" means any nonresidential facility which provides basic training and habilitation to clients.

(15) "Direct service provider," also known as "caregiver" in chapters 39 and 415 or "caretaker" in provisions relating to employment security checks, means a person 18 years of age or older who has direct contact with individuals with developmental disabilities and is unrelated to the individuals with developmental disabilities.

(a) The term "direct service provider" also includes any person, including members of the direct service provider's family, over 12 years of age who resides with the direct service provider when:

1. The direct service provider provides supports or services in his or her residence;
2. The direct service provider provides supports or services in a facility adjacent to his or her residence; or
3. The person residing with the direct service provider has direct contact with the individual with developmental disabilities during the hours of provision of supports or services.

(b) Persons residing with the direct service provider, including family members, who are between the ages of 12 years and 18 years are not required to be fingerprinted, but shall be screened for delinquency records.

(c) A volunteer who assists on an intermittent basis for less than 40 hours per month is not a direct service provider for the purposes of screening if the volunteer is under the direct and constant supervision of persons who meet the personnel requirements of s. 393.0655.

(d) A physician, nurse, or other professional licensed and regulated by the Department of Business and Professional Regulation is not a direct service provider for the purposes of screening if the service he or she is providing to a client is within the scope of practice for which he or she is licensed.

(e) A person selected by the family or the individual with developmental disabilities and paid by the family or the individual to provide supports or services is not a direct service provider for the purpose of screening.

(16) "District" means a service district of the department.

(17) "Domicile" means the place where a client legally resides, which place is his or her permanent home. Domicile may be established as provided in s. 222.17. Domicile may not be established in Florida by a minor who has no parent domiciled in Florida, or by a minor who has no legal guardian domiciled in Florida, or by any alien not classified as a resident alien.

(18) "Enclave" means a work station in public or private business or industry where a small group of persons with developmental disabilities is employed and receives training and support services or follow-along services among nonhandicapped workers.

(19) "Epilepsy" means a chronic brain disorder of various causes which is characterized by recurrent seizures due to excessive discharge of cerebral neurons. When found concurrently with retardation, autism, or cerebral palsy, epilepsy is considered a secondary disability for which the client is eligible to receive services to ameliorate this condition according to the provisions of this chapter.

(20) "Express and informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the

person giving consent to make an understanding and enlightened decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(21) "Family care program" means an alternative to residential placement, in which a direct service provider provides a home for a client and assists him or her to the extent necessary for the client to participate in normal activities and to meet the demands of daily living. The program provides the support needed by the client's family or caretaker to meet the individual needs of the client.

(22) "Follow-along services" means those support services which shall be provided to persons with developmental disabilities in all supported employment programs and may include, but are not limited to, family support, assistance in meeting transportation and medical needs, employer intervention, performance evaluation, advocacy, replacement, retraining or promotional assistance, or other similar support services.

(23) "Foster care facility" means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall not be more than three residents.

(24) "Group home facility" means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 residents but not more than 15 residents. For the purposes of this chapter, group home facilities shall not be considered commercial enterprises.

(25) "Guardian advocate" means a person appointed by the circuit court to represent a person with developmental disabilities in any proceedings brought pursuant to s. 393.12, and excludes the use of the same term as applied to a guardian advocate for mentally ill persons in chapter 394.

(26) "Habilitation" means the process by which a client is assisted to acquire and maintain those life skills which enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(27) "High-risk child" means, for the purposes of this chapter, a child from birth to 5 years of age with one or more of the following characteristics:

- (a) A developmental delay in cognition, language, or physical development.
- (b) A child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated.
- (c) A child with a parent or guardian who is developmentally disabled and who requires assistance in meeting the child's developmental needs.
- (d) A child who has a physical or genetic anomaly associated with developmental disability.

(28) "Intermediate care facility for the developmentally disabled" or "ICF/DD" means a state-owned-and-operated residential facility licensed in accordance with state law, and certified by the Federal Government pursuant to the Social Security Act, as a provider of Medicaid services to persons who are mentally retarded or who have related conditions. The capacity of such a facility shall not be more than 120 clients.

(29) "Job coach" means a person who provides employment-related training at a work site to individuals with developmental disabilities.

(30) "Medical/dental services" means those services which are provided or ordered for a client by a person licensed pursuant to the provisions of chapter 458, chapter 459, or chapter 466. Such services may include, but are not limited to, prescription drugs, specialized therapies, nursing supervision, hospitalization, dietary services, prosthetic devices, surgery, specialized equipment and supplies, adaptive equipment, and other services as required to prevent or alleviate a medical or dental condition.

(31) "Mobile work crew" means a group of workers employed by an agency that provides services outside the agency, usually under service contracts.

(32) "Normalization principle" means the principle of letting the client obtain an existence as close to the normal as possible, making available to the client patterns and conditions of everyday life which are as close as possible to the norm and patterns of the mainstream of society.

(33) "Personal services" include, but are not limited to, such services as: individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar services which the department may define by rule. "Personal services" shall not

be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility, except as provided in this chapter. In addition, an emergency response device installed in the apartment or living area of a resident shall not be classified as a personal service.

(34) "Prader-Willi syndrome" means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate retardation, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

(35) "Reassessment" means a process which periodically develops, through annual review and revision of a client's family or individual support plan, a knowledgeable statement of current needs and past development for each client.

(36) "Rehabilitation workshop facility" means a place operated by a for-profit or nonprofit agency engaged in the manufacture or production of products or provision of services, which provides gainful rehabilitation to severely handicapped persons until such persons can become employed or which provides gainful work to persons who are developmentally disabled.

(37) "Relative" means an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or more.

(38) "Resident" means any person who is developmentally disabled residing at a residential facility in the state, whether or not such person is a client of the department.

(39) "Residential facility" means a facility providing room and board and personal care for persons with developmental disabilities.

(40) "Residential habilitation center" means a community residential facility operated primarily for the diagnosis, treatment, habilitation, or rehabilitation of its residents, which facility provides, in a structured residential setting, individualized continuing evaluation, planning, 24-hour supervision, and coordination and integration of health or rehabilitative services to help each resident reach his or her maximum functioning capabilities. The capacity of such a facility shall not be less than nine residents. After October 1, 1989, no new residential habilitation centers shall be licensed and the licensed capacity shall not be increased for any existing residential habilitation center.

(41) "Respite service" means appropriate, short-term, temporary care that is provided to a person with developmental disabilities to meet the planned or emergency needs of the person with developmental disabilities or the family or other direct service provider.

(42) "Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. "Adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(43) "Screening," for purposes of employment, contracting, or certification, means the act of assessing the background of direct service providers and independent support coordinators, who are not related to clients for whom they provide services, and includes, but is not limited to, employment history checks, local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through the Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation; except that screening for volunteers included under the definition of personnel includes only local criminal records checks through local law enforcement agencies for current residence and residence immediately prior to employment as a volunteer, if different; and statewide criminal records correspondence checks through the Department of Law Enforcement.

(44) "Severe self-injurious behavior" means any chronic behavior that results in injury to the person's own body, which includes, but is not limited to, self-hitting, head banging, self-biting, scratching, and the ingestion of harmful or potentially harmful nutritive or nonnutritive substances.

(45) "Specialized therapies" means those treatments or activities prescribed by and provided by an appropriately trained, licensed, or certified professional or staff person and may include, but are not limited to, physical therapy, speech therapy, respiratory therapy, occupational therapy, behavior therapy, physical management services, and related specialized equipment and supplies.

(46) "Spina bifida" means, for purposes of this chapter, a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

(47) "Support coordinator" means a person who is designated by the department to assist individuals and families in identifying their desires, capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

(48) "Supported employee" means a person whose developmental disability has traditionally kept him or her from integrated, community-based employment and who requires ongoing support or follow-along services in order to maintain community-based employment.

(49) "Supported employment" means employment located or provided in a normal employment setting which provides at least 20 hours employment per week in an integrated work setting, with earnings paid on a commensurate wage basis, and for which support or follow-along services are needed for continuing job maintenance.

(50) "Supported living" means a category of individually determined services designed and coordinated in such a manner as to provide assistance to adult clients who require ongoing supports to live as independently as possible in their own homes, to be integrated into the community, and to participate in community life to the fullest extent possible.

(51) "Training" means a planned approach to assisting a client to attain or maintain his or her maximum potential and includes services ranging from sensory stimulation to instruction in skills for independent living and employment.

(52) "Treatment" means the prevention, amelioration, or cure of a client's physical and mental disabilities or illnesses.

History.--s. 1, ch. 77-335; s. 1, ch. 79-148; s. 153, ch. 79-400; s. 3, ch. 81-23; s. 4, ch. 85-54; s. 1, ch. 85-147; s. 5, ch. 87-238; s. 5, ch. 88-398; s. 7, ch. 89-308; ss. 2, 4, ch. 89-339; s. 27, ch. 90-306; s. 1, ch. 90-333; s. 17, ch. 91-158; s. 3, ch. 94-154; s. 1045, ch. 95-148; s. 53, ch. 95-228; s. 1, ch. 95-293; s. 13, ch. 96-417; s. 23, ch. 98-171; s. 140, ch. 98-403; s. 80, ch. 99-8; s. 203, ch. 99-13; s. 3, ch. 2000-338.

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